Bail ship

The 9th Appeallant/Accused No.13 namely Swamikannu @ samy in SC 87 of 2003 on the file of the Additional District and Sessions Judge, Chennai, was directed to be released on bail in and by the order of this court dated 4.12.2006 made in Crl.M.NO.4507 of 2006 in C.A.No.698 of 2004 on the filed of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.10.2007

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE K.N.BASHA

Criminal Appeal Nos.698, 716 and 781 of 2004
and Criminal Appeal No.685 of 2005

Crl.A.No.698 of 2004:

1.Manickam @ Poonga Manickam
2.Somasundaram @ Somu
3.Balamurugan @ Bala
4.Sankar Ganesh @ Sankar
5.Iruthayaraj @ Iruthi
6.Anbu @ Jaibeem Anbu
7.Leela Sankar @ Sankar
8.Sampath.
9.Samikannau @ Sami
10.Ramesh @ Suri Ramesh
11.Bomb Selvam @ Selvam
12.Jagadeesan @ Jagan
13.Sekar @ Gunasekar @ Guna ..Appellants/Accused A3 to A8 A.10 and A.11 and A.13 to A.17

Versus

State rep. by
The Deputy Commissioner of Police
CBCID Metro Wing, Chennai Respondent/Complainant

Crl.A.No.716 of 2004:

Hariharan @ Hari Appellant/Accused 2

Versus

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State rep. by
The Deputy Commissioner of Police
CBCID Metro Wing, Chennai. Respondent/Complainant

Crl.A.No.781 of 2004

Udayakumar Appellant/Accused 9

Versus

State rep. by
The Deputy Commissioner of Police
CBCID Metro Wing, Chennai. Respondent/complainant

Crl.A.No.685 of 2005

State rep.by
The Deputy Commissioner of Police
CBCID Metro Wing, Chennai Appellant/Complainant

Versus

1.Manickam @ Poonga Manickam
2.Somasundaram @ Somu
3.Balamurugan @ Bala
4.Sankar Ganesh @ Sankar
5.Iruthayaraj @ Iruthi
6.Anbu @ Jaibeem Anbu
7.Udayakumar
8.Leela Sankar @ Sankar
9.Sampath
10.H.Ramitta @ Romitla Mary
11.Samikannau @ Sami
12.Ramesh @ Suri Ramesh
13.Bomb Selvam @ Selvam
14.Jagadeesan @ Jagan
15.Sekar @ Gunasekar @ Guna
16.Ganesan @ Naraimudi Ganesan ..Respondents/
Accused A.3 to A.18.

Crl.A.Nos.698, 716 and 781 of 2005:
Criminal Appeals filed against the conviction and sentence imposed on the appellants dated 19.04.2004 made in S.C.No.87 of 2003, on the file of the Fast Track Court No.I, Chennai.

Crl.A.No.685 of 2005:
Criminal appeal filed against the acquittal of A.12 and A.18 dated 19.04.2004 made in S.C.No.87 of 2003, on the file of the Fast Track Court No.I, Chennai.

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For Appellants : Mr.A.Padmanabhan for A.3 and A.5 to A.7
in Crl.A.Nos.698
716 and 781/2004 Mr.R.John Sathyan for A.4 and A.15.

Mr.B.Sriramulu, Senior Counsel
for Mr.K.Selvakumaraswami and A.G.Ramesh
for A.10, A.11 and A.14.

Mr.R.Sankarasubbu for Mr.P.Vijendran
for A.8

Mr.B.Mohan for Mr.N.Manokaran for A.13,
A.16 and A.17

Mr.K.Ashokan Senior Counsel for
Mr.G.Ravikumar for A.2

Mr.S.Ashok Kumar Senior Counsel
for Mr.A.N.Thambidurai for A.9

Respondents : Mr.C.T.Selvam
Additional Public Prosecutor
assisted by Mr.R.Muniapparaj
Government Advocate(Crl. Side)
for State in all cases

Appellants in
Crl.A.No.685/2005 : Mr.C.T.Selvam
Additional Public Prosecutor

For Respondents
in Crl.A.No.685/2005 : Mr.A.Padmanabhan
for R1 and R3 to R5

Mr.R.JohnSathyan for R.2

Mr.Mr.R.Sankarasubbu
for Mr.P.Vijendran for R.6

Mr.S.Ashok Kumar
for Mr.A.N.Thambidurai for R.7

Mr.B.Sriramulu Senior Counsel
for Mr K.Selvakumaraswami
for R.8, R.9 and R.12.

Mr.B.Mohan
for Mr.N.Manokaran
for R.11, R.14 and R.15.
Mr.T.K.Sampath for M/s.T.K.Sampath Associsates
for R13

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Mr.N.Duraisamy for R.16

Mr.M.V.Muralidaran
and E.M.K.Yashwanth Rao
for R.10.

COMMON JUDGMENT

D. MURUGESAN., J.

All the above appeals arise out of the common Judgment dated 19.04.2004 made in S.C.No.87 of 2003, on the file of the learned Additional District and Sessions Judge, (Fast Track Court -I), Chennai.

2. Before the trial Court 18 accused were tried and the learned trial Judge acquitted A.12 and A.18 under Section 235(1) Cr.P.C and convicted the rest of the accused. As against the acquittal of A.12 and A.18, the State has preferred Criminal Appeal No.685 of 2005.

3. The conviction and sentence in respect of all other accused are as follows:

CHARGES

	120 -B IPC	365 IPC * 365 r/w 109 IPC	387 IPC	302 IPC *302 r/w109 IPC	347 IPC *347 r/w109 IPC	364 IPC *364 r/w 109 IPC	201 IPC
Accused	Conviction fine amount	Conviction fine amount / in default imprisonment	Conviction fine amount / in default imprisonment	Conviction fine amount / in default imprisonment	Conviction fine amount / in default imprisonment	Conviction fine amount / in default imprisonment	Conviction fine amount / in default imprisonment
Senthil Kumar A-1	Life Sentence Rs.50,000	*7 years R.I. Rs.5,000/ 1 year R.I	7 years R.I. Rs.5,000 1 Year R.I.	*Life Sentence Rs.50000 1 year R.I	*3 years R.I Rs.5000 6 months R.I	*10 years R.I Rs.5,000 2 years R.I	--
Hariharan A-2	Life Sentence	*7 years R.I Rs.5000 1 year R.I.	7 years R.I Rs.5000 1 year R.I.	*Life Sentence Rs.50000 1 year R.I	* 3 years R.I Rs.5000 6 months R.I	*10 Years R.I Rs.5000 2 years R.I.	--

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	120 -B IPC	365 IPC * 365 r/w 109 IPC	387 IPC	302 IPC *302 r/w109 IPC	347 IPC *347 r/w109 IPC	364 IPC *364 r/w 109 IPC	201 IPC
Poonga Nagar Manickam A-3	Acq. U/s 235 (I) Cr.P.C	*7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 Years R.I 2 years R.I	7 years R.I Rs.10000 1 year R.I
Somasundaram A-4	Acq. U/s 235 (I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	--
Balamurugan A-5	Acq.u/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	*Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I
Shankar Ganesh A-6	Acq.u/s 235(I) Cr.P.C	*7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I.	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I
Irudhayaraj A-7	Acq. U/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I
Jaibeam Anbu A-8	Acq. U/s 235(I) Cr.P.C	* 7 years R.I Rs.5000 1 year R.I.	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I

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	120 -B IPC	365 IPC * 365 r/w 109 IPC	387 IPC	302 IPC *302 r/w109 IPC	347 IPC *347 r/w109 IPC	364 IPC *364 r/w 109 IPC	201 IPC
Udhayam kumar A-9	Acq.u/s 235(I) Cr.P.C	*7 years R.I Rs.5000 1year R.i	7 years R.I Rs.5000 1 year R.i	*Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	--
Leela Shankar A-10	Acq.u/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 y r R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I
Sampath A-11	Acq.u/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I
Romitta Mary A-12	Acquitted under Section 235(I) Cr.P.C	--	--	--	--	--	--
Swamikannu A-13	Acq.u/s 235(I) Cr.P.C	*7 years R.I Rs.5000 1 year R.I	--	*Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.i	7 years R.I Rs.10000 1 year R.
Sori Ramesh A-14	Acq.u/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I.

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	120 -B IPC	365 IPC * 365 r/w 109 IPC	387 IPC	302 IPC *302 r/w109 IPC	347 IPC *347 r/w109 IPC	364 IPC *364 r/w 109 IPC	201 IPC
Bomb Selvam A-15	Acq.u/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.i	7 years R.I Rs.10000 1 year R.I
Jagadeesan A-16	Acq.u/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I
Gunasekar A-17	Acq.u/s 235(I) Cr.P.C	7 years R.I Rs.5000 1 year R.I	7 years R.I Rs.5000 1 year R.I	Life Sentence Rs.50000 1 year R.I	3 years R.I Rs.5000 6 months R.I	10 years R.I Rs.5000 2 years R.I	7 years R.I Rs.10000 1 year R.I
Naraimudi Ganesan A-18	Acquitted under Section 235(I) Cr.P.C						

4. The brief facts of the prosecution case as putforth before the trial Court through witnesses and Exhibits are as follows:

(a) One Thiru M.K.Balan, a former Member of Legislative Assembly elected from Saidapet constituency, went for his routine morning walking at about 5.30a.m on 30.12.2001 towards MRC Nagar, via Karpagam Avenue, Adyar. He was wearing a black pant and a light brown T-Shirt. He was also wearing a pair of black Reebok Shoes. He used to return home after the morning walk within two hours. On the above date, as he did not return home, his son by name B.Manimaran, P.W.1 went to E-5, Pattinapakkam Police Station and gave the complaint under Ex.P.1 at 11.00a.m., which was registered by the Sub Inspector of Police in Crime No.986 of 2001 for "Man missing". The investigation was taken over by P.W.66, the Inspector of Police and he registered First Information Report under Ex.85. The investigating Officer send a message to the Control Room, Chennai and thereafter he enquired P.W.1, the son of M.K.Balan and one Christopher P.W.9 and recorded their statements. He made arrangements to send the photograph of the said M.K.Balan to other Police Stations and also publish the same in Newspaper. On 31.12.2001, he recorded the statement of P.W.28

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and examined P.W.3 and P.W.4. He recorded the statement P.W.4 on 05.01.2002, statement of P.W.2 on 06.01.2002 and the statement of P.W.27 on 10.01.2002. As the case was transferred to CBCID Police, Chennai, he handed over the case diary to CBCID on 12.01.2002, and thereafter, the Deputy Superintendent of Police, CBCID, P.W.67 took up the investigation and examined P.W.1. On 13.01.2002, he examined P.W.14, and again on 15.01.2002, he examined P.Ws.1 to 4 and P.W.67 and recorded their statements. On 16.01.2002, he examined P.W.13 and 13 other persons. On 18.01.2002, he examined P.W.9 and two others. On 21.01.2002, he examined P.W.6 and on the same day, he send information to the P.W.67, Superintendent of Police, Crime Records Parol, to identify the unidentified male dead body and photographs. On 22.01.2002, he examined P.W.28 and ten others. On 21.01.2002, he examined P.W.8 and six others. On 31.01.2002, he examined P.W.5 and four others. On 05.02.2002, he obtained further statement from P.W.4.

(b). On 21.02.2002, the Investigating Officer came to know the involvement of A-5 in the offence though an informant and a team was formed to follow A-5. On 18.03.2002 at about 5.30a.m, P.W.67 arrested A.5 and recorded the confession statement under Ex.P.43 attested by P.W.44. A.5 took P.W.67 and identified TPK Food Products company at Mudichur, where he prepared observation mahazors Exs.P.44 and 46 and drew a rough sketch Ex.P.45. He examined P.Ws.31 and 34 and thereafter, he went to the house of P.W.10 and made recoveries as per the admissible portion of the statement of A.5 under Exs.P.41 to 49 attested by P.W.30. Thereafter, A.5 took him to the cremation ground at Perambur where P.W.67 prepared observation mahazar Ex.P.47 and drew a rough sketch Ex.48. He also recorded the statement of P.W.12 and P.W.19, two vettians, who identified M.O.14, the photograph of M.K.Balan. He prepared an identification mahazar under Ex.P.46 in the presence of P.W.44. Thereafter, he examined one Kannan, Office Assistant of the Corporation of Chennai and recovered Ex.P.29, the death report relating to one Rajamani Chettiar, son of Chindamani Chettiar aged about 61 years, Ex.P.30, the death register, Ex.P.31 the counter foil and Ex.P.32, the despatch note book. On the same day, he recorded the statement of P.W.12 and P.W.19, the vettians and P.W.36, the office assistant of the Corporation of Chennai and recorded their statements.

(c). On the basis of the statement of A-5, the Investigating Officer altered the FIR, Ex.P.86 into one under Section 120(B) read with Sections 364, 365, 302 and 201 of IPC.

(d). On 19.03.2002, the Investigating Officer again visited the cremation ground along with forensic experts and recovered jaw bone, one tooth and Ash in the presence of P.W.12 and yet another witness by name Rajarajan. On 19.03.2002 at about 11.30p.m, he arrested A-6 near Perambur bus stand. He recorded the admissible portion of the confession statement from A-6 under Ex.P.16 on 20.03.2002 in the presence of P.W.24 and one another witness and seized one Maruthi Omni Van M.O.18 under a mahazar Ex.P.17 and recorded the statement of one John Kennedy P.W.37. On the same day, at about 12.30p.m, he arrested A-7 at Mulakothalam bus stand and recorded his confession statement Ex.P.38 and on the basis of the admissible portion of the confession statement, he recovered the iron cot

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M.O.11 in the presence of P.W.17 under Ex.P.7. On 22.03.2002, he arrested A-8 and recovered Exs.P.27, 28 and P.52 from P.W.45. On 23.02.2002 at about 5.30a.m., he arrested A.1 and A.2 and recorded the confession statement of A.1 under Ex.P.14 and recovered M.Os.21 to 26 series under mahazar Ex.P.15. On 25.03.2002, at about 8.15a.m he arrested A.3 and recorded his confession statement Ex.P.20 and on the basis of the admissible portion of the evidence, he recovered M.O.12, Maruthi Zen Car under a mahazar Ex.P.6 on the same day. He examined P.Ws.32, Lusker in the Corporation of Chennai and P.W.33, Proprietor of DKP Food Products, Mudichur. On 30.03.2002, at about 7.45 a.m, he arrested A.9 and recorded his confession statement under Ex.P.37 in the presence of P.W.41 on the basis of the admissible portion of the confession statement, he recovered M.O.7, Maruthi Van TN-22-B-8853 from P.W.18 in the presence of P.W.25. He took police custody of A.1 and A.3 as per the orders of the Magistrate on 01.04.2002 for a period of ten days and examined both of them. On 03.04.2002, A.13 surrendered before the V-Metropolitan Magistrate in connection with Crime No.1440/2001 in Anna Nagar Police Station. On 04.04.2002, A.1 gave confession under Ex.P.12 which lead to recovery of M.Os.15 to 20 under Ex.P.30 to P.W.24. A.3 also gave a confession statement on 05.04.2002 which lead to the recovery of M.Os.28 to 33 under the cover of mahazar Ex.P.36 in the presence of P.W.10. He recorded further statement of P.W.1 on 06.04.2002 and thereafter arrested A.10 and A.11 at 10.30a.m at Moor Market Sub-way on 06.04.2003. He recorded the confession statement of A.10 under Ex.P.53 and recovered M.O.2, Tape recorder under the mahazar Ex.P.54. He also obtained sample signature Ex.P.55 from A.1 in the presence of P.W.46. On 09.04.2002 at about 6.00a.m he arrested A.4 at Chrompet Railway Station and recorded his confession statement Ex.P.34 in the presence of P.W.9 and recovered M.O.6, Ford Escort Car bearing Registration No.TN-10-F-5555 under mahazar Ex.P.19. On 10.04.2002 at about 8.00a.m, he arrested A.12 at Egmore Railway Station and recorded the confession statement under Ex.P.22 and recovered M.Os.21 to 32 under Ex.P.23 in the presence of P.W.29. As A.12 has expressed his willingness to give confession statement under Section 124 Cr.P.C, a petition was filed before the Chief Metropolitan Magistrate, Egmore on 11.04.2002. P.W.67 came to know about the confinement of A.13 in the Central Prison, Chennai and effected a formal arrest on 19.04.2002. He arrested A.15 at Ega Theater on 24.04.2002 and recorded the confession statement under Ex.P.50 in the presence of P.W.44. He also recovered M.O.10, Hero Honda bike under a mahazar Ex.P.51. Thereafter, he recorded the statement of P.Ws.61 to 65 on 08.01.2002. On coming to know about the surrender of A.16, he obtained police custody for a period of ten days from 16.05.2002 to 22.05.2002. He also recorded the confession statement of A.16 under Ex.P.56 in the presence of P.W.47 and recovered M.Os.34 to 39 under mahazar Ex.P.57 on 22.05.2002. He examined and recorded the statement of P.W.20, P.W.40, P.W.51 and P.W.56 on 25.05.2002 and thereafter, he recorded the statement of P.Ws.49,50 and 57 on 26.05.2002, 27.05.2002 and 30.05.2002 respectively. He obtained four video cassettes and M.O.27 from P.W.28 and prepared the mahazar Ex.P.21. He examined P.W.43 and obtained Exs.P.39 to 42. He sent M.Os.31 to 33 namely the piece of paper and plastic cover for forensic department for comparison

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with Ex.P.55.

(e). On 14.06.2002, the Investigating Officer filed final report in PRC.No.55 of 2002 before the XXIII Metropolitan Magistrate, Chennai, against A.1 to A.16 and A.17 and one unknown accused who was absconding. He filed an application on 19.06.2002 for further investigation as he came to know about the whereabouts of the absconding accused and thereafter, he arrested A.17 at about 9.00a.m at Egmore Railway Station on 01.07.2002. Thereafter, he also came to know about the involvement of A.18. As A.18 surrendered in connection with Dindigul Police Station of Crime No.514/2002, he took police custody on 01.08.2002 and thereafter he filed final report on 10.01.2003 under Section 120-B r/w Sections 364, 365, 419, 437, 387, 302, 420 and 201 of IPC.

5. In order to prove the guilt of the accused, the prosecution had examined P.W.1 to P.W.67, marked Exs.P.1 to P.86 and produced M.Os.1 to 39. When the accused were questioned under Section 313 Cr.P.C., as to their involvement in the offence, they had categorically denied each and every charges.

6. On consideration of the evidence put forth on the side of the prosecution, the learned Judge had found the accused guilty, convicted and sentenced A.1 to A.11 and A.13 to A.17 as stated in the earlier portion of the order and acquitted A.12 and A.18. Aggrieved by the above judgment, the present appeals have been filed. As against the acquittal of A.12 and A.18, the State has also preferred the appeal.

7. We have heard Mr.K.Ashokan, learned Senior Counsel appearing on behalf of G.Ravikumar, for the appellant in C.A.No.716 of 2004, Mr.A.Padmanabhan, learned counsel appearing for A-3 and A-5 to A-7, Mr.R.John Sathyan appearing for A.4 and A.15, Mr.B.Sriramulu, Senior Counsel appearing on behalf of K.Selvakumaraswami and A.G.Ramesh for A.10, A.11 and A.14, Mr.Sanakarasubbu on behalf of Mr.P.Vijendran for A.8, B.Mohan appearing on behalf of Mr.N.Manokaran for A.13, A.16 and A.17, Mr.K.Ashok kumar Senior Counsel appearing on behalf of A.N.Thambidurai for A.9 and Mr.C.T.Selvam, learned Additional Public Prosecutor for the State assisted by Mr.R.Muniapparaj, Government Advocate (Criminal side) in all the appeals. In the State appeal in Crl.A.No.685 of 2005 questioning the conviction and sentence imposed on A.12 and A.18, we have also heard Mr.A.Padmanabhan for R.1 and R.3 to R.5, Mr.R.JohnSathyan for R.2 and R.13, Mr.R.Sankarasubbu for Mr.P.Vijendran for R.6, Mr.S.Ashok Kumar for Mr.A.N.Thambidurai for R.7, Mr.B.Sriramulu Senior Counsel for Mr.K.Selvakumaraswami for R.8, R.9 and R.12, Mr.B.Mohan for Mr.N.Manokaran for R.11, R.14 and R.15, Mr.N.Duraisamy for R.16 and Mr.M.V.Muralidaran and E.M.K.Yashwanth Rao for R.10.

8. Mr.K.Ashokan, learned Senior Counsel appearing for A.2 has submitted that (A) there is no evidence as regard to motive for the alleged kidnapping of M.K.Balan except the judicial confession of A.12 who has also been acquitted and in the absence of any material to corroborate, the prosecution has failed to establish the motive aspect. (B) none of

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the witnesses have spoken about the abduction of M.K.Balan on the morning of 30.12.2001 except P.W.3 who could only speak to the extent that he saw a man was pushed into a van by three persons. The entire prosecution case stands solely on the testimony of P.W.10 and P.W.11. A careful reading of their evidence in its entirety would show that both P.W.10 and P.W.11 had actively involved themselves with other accused more particularly A.3 and A.9, and they being the accomplicees their evidence must be carefully scrutinized to sustain the case of the prosecution case. (C) the conduct of P.W.10 and P.W.11 throw serious doubt as to the veracity of the evidence. After the occurrence, both of them had absconded for nearly four months and in the mean time though there were wide publicity as to the missing of M.K.Balan in the media and newspapers, they did not care to inform to the police as to what they had known and more particularly they had failed even to inform the family members of M.K.Balan. The statement under Section 161 Cr.P.C was admittedly recorded by P.W.67 from P.W.11 only on 30.04.2002. Equally the statement under Section 161 Cr.P.C was recorded from P.W.10 only on 01.05.2002. Their statements implicated the accused only after the arrest of A.5 on 18.03.2002. In view of the above conduct, their evidences are unreliable and it would not be safe to convict the accused on the testimony of P.Ws.10 and 11. (D) P.W.49 who was the driver of A.3 who had again said to have seen the incident had turned hostile. (E) There was enormous delay in the conduct of identification parade and also procedures that are to be normally adopted during the course of identification parade have not been followed and for the same reason, the identification of the accused if any cannot be relied upon. (F) The body of M.K.Balan was not identified and the prosecution has failed to prove even the death of M.K.Balan.

9. Mr.A.Padmanabhan, learned Counsel appearing for A.3 had also submitted on the same line, but with the following additions:

According to the learned Counsel, P.Ws.10 and 11 are rich businessmen and though they had claimed knowledge about the incident that had taken place on 30/31-12-2001, they did not open their mouth for a period of four months. The learned counsel however would submit that both P.Ws.10 and 11 were taken by the police and were in the custody for over a period of three months and only to escape from the clutches of law for implication in the case, they had been made as witnesses to falsely implicate the accused and in such circumstances, their evidence is contrary to truth and consequently cannot be believed. He would also submit that the prosecution has failed to prove the voice of A.12, who is an Anglo-Indian lady and there is no corroboration as to the material particulars. He would submit that M.O.28 Audio Cassettes and M.O.33 bit papers were not sealed immediately after seizure and therefore, the recovery cannot be believed and consequently no reliance can be placed on M.O.28 and M.O.30.

10. Mr.B.Sriramulu learned counsel appearing for A.10, A.11 and A.14 has also reiterated the same contention that P.W.10 and P.W.11 are accomplices and therefore their evidence should be carefully scrutinized. The statement of one accomplice cannot corroborate the other accomplice.

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Though they were initially shown as accused in the altered FIR, they have not been prosecuted. He would also submitted the abnormal conduct of both P.W.10 and P.W.11 shown that they are not speaking truth and they only falsely implicated all the accused, more particularly A.10, A.11 and A.14. He would also submit that P.W.10 had not identified A.10 in the identification parade, but only before the Court he identified A.10. P.W.11 on the other hand, had not identified A.10 before the Court.

11. Mr.John Sathyan, learned counsel appearing for A.4 and A.15 had submitted that in so far as A.4, though P.Ws.10 and 11 had implicated, their evidence are contrary to each other while they spoke about A.4. He would also submit that even in regard to the identifications, both P.Ws.10 and P.W.11 identified A.4 in Court only. A.4 was arrested on 09.04.2002 and the identification parade was conducted only on 24.05.2002 with enormous delay, and therefore, there is every possibility of the accused shown to the witnesses before identification parade was conducted. He would also rely upon the 164 Statement of P.W.10 and P.W.11 and submit that those statements cannot be the basis for the conviction. He would also submit that in so far as the recovery, as the arrest of A.4 was on 09.04.2002, the recovery of M.O.6, Ford Car was made as per Ex.P.34, on the basis of the confession statement of A.4. However, A.5 arrested on 18.03.2002 had even spoken about the Ford Car M.O.6. Therefore, the seizure of M.O.6 infact is false and that the police have only created the records for the purpose of prosecuting A.4.

12. Mr.John Sathyan, learned counsel further submitted that as the counsel on record Mr.D.K.Sampath had returned his brief to the wife of A.15, Srimathi Amarvathi and he has been instructed to appear, he shall be permitted to represent A.15. We enquired Srimath Amaravathi, wife of A.15 who was present in the court. She also expressed her desire for Mr.John Sathyan, learned counsel to represent A.15. Hence, we heard the submission of Mr.John Sathyan learned counsel for A.15 also. He submitted that in so far as A.15 is concerned, P.W.11 alone had spoken about him. Even P.W.11 had stated that he saw A.15 on 30.12.2001, the previous day of the alleged occurrence and he had never implicated A.15 as to his involvement of the occurrence that had taken place on 31.12.2001. He would also submit that A.15 was arrested on 25.04.2002 at about 12.30p.m and the recovery of M.O.10, Hero Honda and M.O.1 said to have been owned by the deceased at the time of his death were not at all established. He would infact draw our attention to the evidence of P.W.1 where he disowns M.O.1 as that of his father M.K.Balan. He would also submit that P.W.10 was said to have involved himself from the beginning had not implicated A.15.

13. Mr.Sankarasubbu, learned counsel appearing for A.8 has submitted that no procedure was followed in the conduct of identification parade. There was no identification parade in so far as A.8 was concerned and in the absence of any identification parade, A.8 ought not to have been implicated at all for the offence. He would further submit that as P.W.10 was detained for three months, only to get rid of any of the prosecution

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he had come with a false case implicating the accused and even otherwise his evidence should not be taken into consideration, unless the same is corroborated by independent incriminating materials. In the absence of such materials, the conviction cannot be sustained based on the sole testimony of P.W.10. He would also submit that even before the identification parade was conducted, photographs of the accused were published in the newspapers and therefore, the identification parade has no relevance.

14. Mr.S.Ashok Kumar, learned Senior Counsel appearing for A.9 had also reiterated the contention that as both P.Ws.10 and 11 are in the nature of accomplicees, their evidence should be carefully considered. The learned senior counsel pointed out that though it is alleged by the prosecution that only at the instance of A.9, the vehicle namely Maruthi van was arranged, P.W.20 the owner of the said vehicle categorically admitted in his cross examination that the van was given only at the instance of P.W.10. It is also further pointed out by the learned senior counsel that P.W.34, owner of the Semiya Manufacturing Factory categorically stated in the Chief Examination itself that only at the instance of P.W.10 and P.W.11, the factory premises was fixed for the accused. It is also highlighted by the learned Senior Counsel that P.W.10 admitted in his cross examination that he was not in terms with A.9 and further he has also admitted in the cross examination that A.9 and himself were not aware of the abduction of the deceased.

15. Per contra, Mr.C.T.Selvam, learned Additional Public Prosecutor has submitted that as the case rests on circumstantial evidence, the prosecution in order to bring home the guilt of the accused, must prove the following:

"i) The preparation made by the accused towards housing and holding the abducted person.

ii) The abduction of the said M.K.Balan

iii) The purpose of abducting M.K.Balan

iv) The sighting M.K.Balan in the custody of the accused by witness.

v) The sighting of the body of the deceased by witness.

vi) The transport of the body of the deceased to the cremation ground.

Vii) The fact of cremation

viii) The fact of the accused effecting the cremation of the deceased on the false representation of the deceased being somebody else.

ix) The disposal of the material used for the purpose of abduction.

x) The fact of food purchased for several persons from 30.12.2001 to 01.01.2002."

For the purpose of abduction, P.W.1 who is none other than the son of M.K.Balan had deposed that his father as usual went for the morning walk at 5.30a.m on 30.12.2001 to M.R.C Nagar and he used to return in two hours time, but on the fateful day, he did not return. P.W.13 an

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independent witness had seen M.K.Balan walking along M.R.C Nagar at the same time. P.W.3 yet another independent witness had deposed that he saw three persons pushing a person into a van and abducting him. The above evidence would show that M.K.Balan was only abducted. The evidence of P.W.10 discloses that he had business relations with A.9. Using the business relations, A.9 had approached P.W.10 and in that context, P.W.10 and P.W.11 had lent their services to arrange for a place, lent the vehicle and also provided food to A.3, A.9 and other accused who were staying in the Semiya Manufacturing factory at Mudichur between 30.12.2001 and 01.01.2002. Though P.W.10 and P.W.11 are in the nature of accomplices, their entire evidence cannot be brushed aside on the said reason, while sufficient incriminating materials are available to implicate the accused. He would also submit that P.W.11 had deposed that he saw the four accused removing and carrying the dead body of the deceased M.K.Balan by A.6, A.7, A.8 and A.11 from Semiya manufacturing factory. He would also submit that evidence of P.W.12 and P.W.19 who are the Vettians in the Corporation burial ground had deposed the cremation of a body on 01.01.2002. P.W.36, the person incharge of the cremation speaks of the production of a death certificate by a person who came along with P.W.19. P.W.33 had requested P.W.32, the Doctor working in Corporation of Chennai to issue death certificate in the name of one Rajamani Chettiar aged about 61 years and on the strength of the said certificate, the body of M.K.Balan was cremated and burned. The evidence of P.W.38, a resident of the place where the address of Rajamani Chettiar was given, disclose that there is no such person lived in the said address. He would also submit that the recovered vehicles were used for abducting M.K.Balan and transporting the dead body to the burial ground. He further submitted that the persons who are running the Hotel at Kakkan Street, where some of the accused resided after the occurrence had deposed about the stay and supply of foods. He would also submit that the recovery of the vehicles used in the transaction. By quoting the above, the learned Additional Public Prosecutor submitted that right from the abduction till the cremation of the body of M.K.Balan, the prosecution has satisfactorily proved the link for the offence.

16. Learned Additional Public Prosecutor further submitted that in so far as the motive aspect is concerned, the confessional statement of A.12 can safely be relied upon and infact the State has also filed appeal against the acquittal of A.12 and if the confessional statement is relied upon, the motive aspect is amply established. He would also submit that though both P.W.10 and P.W.11 were involved at the instance of A.9 in arranging cars and booking rooms, they were innocent about the conspiracy and the motive on the part of the accused to murder M.K.Balan and even if they are to be considered as accomplices, their evidence cannot be totally brush aside and can be relied upon, if the same is corroborated by other materials. He would also brought our attention to the independent evidence and other materials more particularly the evidence of P.W.34, the recovery and the chain of occurrence right from the kidnapping of M.K.Balan till his body was cremated as spoken to by P.Ws.12 and 19. He would also rely upon the confessional statements and submit that the

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confessional statement of co-accused could also be relied upon in certain circumstances for the purpose of corroboration of other material particulars and for the said submission, he would rely upon the decision reported in 2002(2)SCC 35(Prakash Dhawal Khairnar vs. State of Maharashtra) and 2002(7) SCC 33 (Bhima Vs. State of Maharashtra). He would extensively rely upon the false certificate Exs.P.30 and P.31 obtained by the accused and using the same to cremate the deceased. In so far as the delay in the conduct of identification parade, he would submit that as the case was originally registered only for "Man missing" and only after the arrest of A.5 on 18.03.2002, it came to light M.K.Balan was murdered and burned and thereafter only the arrests were made and the last such of arrest was made only on 01.07.2002, when A.17 was taken into custody, and therefore, there was delay in first searching the accused and making arrests. Even otherwise the delay by itself will not affect the identification parade and for the said purpose, the learned counsel would rely upon the Judgment of the Honourable Supreme Court reported in AIR 1972 SC 2478 (Bharat Singh Vs. State of Uttar Pradesh).

17. The learned Additional Public Prosecutor had also submitted that acquittal of A.12 is without any justifiable reason. He would draw our attention to the finding of the learned Judge stating that "as A.12 being an Anglo-Indian lady, she got different culture and therefore she cannot be compared to the lady having Tamil culture and if that being so, the entire case of the prosecution implicating her is false." He would submit the finding is not based on material and only on presumptions and assumptions. He would also submit that in so far as A.18 also, the learned Judge has not given a convincing reason for acquitting the accused inasmuch as he is also involved in the case and therefore the acquittal of both A.12 and A.18 should also be set aside and they should also be convicted.

18. We have given our thoughtful and anxious consideration to the rival submissions made by the respective learned counsel. Before we proceed to consider the respective submissions, we must keep it in mind that the case on hand is a high profile criminal case, as the deceased is said to be a high ranking political functionary. If the case, as put forth by the prosecution is true, it reveals a shocking crime. It is also claimed that there are no eye-witnesses in this case and the entire case of the prosecution rests only on the circumstantial evidence. The given evidence reveals that even during the course of investigation, media had been covering the issue including the investigation stage by stage, since the disappearance of M.K.Balan. The Judgment of the Apex Court reported in AIR 1952 SC 159 (Kashmira Singh Vs. State of Mathya Pradesh) is an indicator as to how this Court should approach the matter like this, wherein it is observed that "It is necessary for this Court to examine the evidence under more than ordinary care lest the shocking nature of the crime induces instinctive reaction against a dispassionate Judicial Scrutiny of facts and law."

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19. M.K.Balan is said to be vanished in cold breeze on the early morning hours on 30.12.2001 while he was on his routine morning walk, only to be stated that his body was burned to ashes under mysterious circumstances.

20. The chain of circumstances as putforth by the prosecution, at the risk of repetition, may be stated as under:

a. On the fateful day namely on 30.12.2001 at about 5.30a.m, M.K.Balan went for morning walk with a T-shirt, black pant and also a black Reebok Shows as spoken by his son P.W.1. He was also seen by P.W.13, while he was walking with a T-Shirt and black colour pant. Thereafter, P.W.3 saw three persons pushing a man inside an Omni Van and drove away from the place. He also saw one motor cycle following the said van. It is the case of the prosecution that the person who had abducted was only M.K.Balan. On the contrary, it is the defence version that nobody had identified the man who has actually pushed inside the van and further the associates in such act.

b. In so far as the abduction of M.K.Balan is concerned, though P.W.1 has spoken of his father went for usual morning walk at 5.30a.m on 30.12.2001 and the evidence of P.W.13 stating that he saw M.K.Balan walking at the very same time, P.W.3 has stated that a person was pushed into a van by three persons and he has not spoken as to whether M.K.Balan was pushed into a van. He has also not spoken as whether the accused pushed the said person into a van.

c. The next link is the evidence of P.W.10 and P.W.11. P.W.11 saw some of the accused bringing M.K.Balan into the Semiya manufacturing factory at Mudichur on the morning by 30.12.2001 and P.W.10 and P.W.11 saw M.K.Balan in the house on the next day morning. Both witnesses have deposed as to the arrangements made by them, namely the premises of Semiya manufacturing factory, some vehicles providing food to M.K.Balan and other accused while M.K.Balan was kept inside a room in the factory and P.W.11 saw four accused carrying the dead body of M.K.Balan on 01.01.2002 in a van.

d. The evidence of P.W.32, Anbarasu Doctor of Corporation of Chennai had issued the death certificate Ex.P.27, certifying the death of one Rajamani Chettiar and the certificate was issued to P.W.33 at the request of A.3, P.W.38 a resident of the place of death of said Rajamani Chettiar had deposed that there is no such person namely, Rajamani Chettiar was lived nor there was any such death. The evidence of P.W.12 Ramu who is the Vettian in the Corporation burial ground that cremation of the body at the instruction of a licensed cremation staff P.W.19, P.W.12 the Vettian of Corporation burial ground, Perambur Crematorium speaks of the cremation of a body of a male person on the night of 01.01.2002 at the instruction of P.W.19 a licensed cremation staff P.W.36 a person incharge of crematorium speaks of production of death certificate Ex.P.7 along with P.W.19. P.W.18 speaks of his associate with A.9 from tender age and having lent his Maruthi van TN-22B-8853, M.O.7, both on 31.12.2001 as also on 01.01.2002 to A.9 which vehicle was used for transporting the body of M.K.Balan from Semiya Manufacturing Factory to Perambur Crematorium. P.W.21, beat Constable speaks of seeing A.7, A.8 and A.11 in a drunken

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state of mind travelling in M.O.7, Maruthi Van on the night on 01.01.2002. The said evidence of P.W.21 who is also corroborated by the evidence of P.W.35 who is another Head Constable.

21. In order to bring the link inbetween, the prosecution heavily relies upon the evidence of P.Ws.10, 11 and 34. P.W.34 is the owner of the premises, viz., The Semiya Manufacturing Factory where M.K.Balan was said to have been confined and done to death. The participation of P.Ws.10 and 11 at various stages of occurrence which show that they are accomplices. Before we dwell upon their evidence, we must consider the evidenciary value of the deposition of an accomplice.

22. An accomplices is undoubtedly a competent witness under the Indian Evidence Act, but the very fact that such an accomplices participated in the commission of offence induces a serious taint in his evidence and courts are only reluctant of such evidence, unless it is corroborated by material particulars by the other independent evidence.

23. The privy counsel in the Judgment reported in AIR 1936 PC 242 (Mahodeo v. The King), while considering the accomplice evidence had observed thus:-

> "It is well settled that the evidence of an accessory, which Sukraj plainly was on his own showing, must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it, and further that evidence of one accomplice is not available as corroboration of another; (1916) 2 K B 658 (1). This rule as to corroboration, as was pointed out in the case just cited, long a rule of practice, is now virtually a rule of law, and in a case like the present it is a rule of the greatest possible importance, the position being that there are three persons all implicated in a crime and one of them or two of them exculpates himself or themselves by fastening the guilt upon the other."

24. The Apex Court in the Judgment reported in AIR 1957 SC 637 (Sarwan Singh v. State of Punjab), considered the admissibility of the accomplice evidence and held in paragraph-7 as follows:

> "On behalf of Harbans Singh, it has been urged before us by Mr.Kohli that the judgment of the High Court of Punjab suffers from a serious infirmity in that, in dealing with the evidence of the approver, the learned Judges do not appear to have addressed themselves to the preliminary question as to whether the approver is a reliable witness or not. The problem posed by the evidence given by an approver has been considered by the Privy Council and Courts in India on several occasions.
>
> It is hardly necessary to deal at length with the true legal position in this matter. An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious stain in his

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evidence and Courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence.

It would not be right to expect that such independent corroboration should cover the whole of the prosecution story on even all the material particulars. If such a view is adopted, it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars of incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

But it must never be forgotten that before the Court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness.

If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered.

In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witness. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver."

25. In the Judgment reported in AIR 1959 SC 1199(Jnanendra Nath Ghose vs. State of West Bengal), it has been held that the approver's evidence must show that he is reliable witness and that is the test which is common to all and that there should be corroboration in material particulars not only concerning the crime but also the corroboration of the approver's story by evidence which connects or tends to connect an accused with the crime.

26. In the Judgment reported in 1963 Madras Weekly Notes (Crl.) 18 (Bhiva Doulu Patil v. State of Maharashtra, in fact the Honourable Supreme court has observed that "though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the courts will as a matter of practice, not accept the evidence of such a witness without corroboration of material particulars and qua each accused."

27. The Judgment in Sarwan singh Case(cited Supra) is quoted with approval by the Apex Court in the subsequent Judgment reported in 1969(3) SCR 236 (Piara Singh vs. State of Punjab).

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28. The Apex court in the Judgment reported in AIR 1979 SC 1761 (Chonampara Chellappan Vs. State of Kerala), while considering the accomplice evidence has observed as follows:

> "The law is well settled that the Court looks with some amount of suspicion on the evidence of an accomplice witness which is a tainted evidence and even Section 133 of the Evidence Act clearly provides that the evidence of an accomplice witness should not be accepted unless corroborated. At the same time, it must be remembered that corroboration must be in respect to material particulars and not with respect to each and every item however minor or insignificant it may be. Actually the requirement of corroboration is a rule of prudence which the courts have followed for satisfying the test of the reliability of an approver and has now been crystallized into a rule of law. It is equally well settled that one tainted evidence cannot corroborate another tainted evidence because if this is allowed to be done then the very necessity of corroboration is frustrated."

29. A deep study on the above approach in law as to the evidenciary value of the deposition of an accomplice, the following settled principles culminate; that an evidence of an accomplice need not necessarily be rejected, that the evidence requires corroboration in material particulars as well as the corroboration of the evidence connecting or tend to connect the accused with the crime, that such accomplice witness is reliable. If the above tests are satisfied, the evidence of an accomplice can be safely relied upon to hold the accused guilty of the offence. Keeping the above principle in mind, the evidence of P.W.10 and P.W.11 should be considered.

30.(a) It is beyond to any debate that the entire prosecution case rests mainly on the evidence of P.Ws.10, 11 and P.W.34. The evidence of P.W.10 shows that he is a close business associate of A.9 from the year 1985. P.W.10 and P.W.11 are business partners in a wine shop. During the year 1999, P.W.10 and A.9 had obtained license to quarry sand at Kulur, Tiruvallur District. A.9 told him that one Krishnapandi, P.W.34, is running a Semiya manufacturing company in the name of T.K.P Food Products at Mudichur and as the company was running at loss, and if they invested, they may earn profit. Therefore, both P.W.10 and P.W.11 invested Rs.3 lakhs each on the said company and gave money to Krishnapandi.

(b). While P.W.10 and P.W.11 had gone to a polling booth in the election held during August 2001, A.9 met P.W.10. A.9 told P.W.10 that he will be joining a leading political party and A.3 will help him and to reciprocate, he should do some favour for A.3. A.9 also told him that A.3 has promised him to get him a post in the party and therefore, he wanted a place to complete the job assigned to him by A.3.

(c). On 08.10.2001, A.9 informed P.W.10 that A.3 requires Rs.1,10,000/- and it will be returned in two to three days. On 10.12.2001, P.W.10 pledged jewels belonging to him and obtained Rs.1,10,000/- and took the said amount to A.9's house as per his instruction. Thereafter A.9 took p.W.10 to Hotel Excellency in T.Nagar

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where A.9 handed over the said amount to A.2. On 30.12.2001, after getting the keys of Semiya Manufacturing Factory, A.3 handed over to P.W.10 and further deposed after getting the keys of semiya manufacturing factory from him, A.3 handed over the said keys to A.5 and A.3 returned to A.9's house along with P.W.10, where P.W.10 saw A.1 and A.2 were staying and P.W.10 heard A.3 telling them that M.K.Balan was brought and the money alone will remains to be collected.

d. At the request of A.9, P.W.10 had arranged the Semiya manufacturing factory belonging to P.W.34 for a week. P.W.10 had also arranged the factory premises for a week. On 31.12.2001, A.1 asked A.9 to collect the recorded cassettes from A.2 and bring a tape recorder and empty cassettes. A.3 also directed A.9 to collect the same from A.2, A.9 collected two audio cassettes. Even after the occurrence, during the first week of January, 2002, A.9 asked P.W.10 to secure a room for A.1, A.2 and A.12 who were staying in A.9's house and P.W.10 arranged rooms at Bhuds Updyaya hotel. He also deposed that after A.9 informed A.3 of the place chosen, P.W.10, A.3, A.9 as well as P.W.34 visited the premises and in the presence of P.W.10, A.9 had informed A.3 that the place was suitable for the job which they had undertaken. Thereafter, at the request of A.3, P.W.10 had arranged a van, table, chair, cot, bedpan etc., and kept the same in the said premises. Thereafter A.9 had requested for the Ford Escort Car, M.O.6 for hire for two or three months and he had infact given his Car to A.9. The Car was taken by the driver of A.3. On 05.12.2001, A.9 again phoned up to P.W.10 and asked him and P.W.11 to come to A.3's house. When P.W.10 and P.W.11 went to the house of A.3, A.5 was also present. P.W.10 and P.W.11 heard A.3 telling A.9 and others present there, that they must bring M.K.Balan, the former M.L.A., as he should collect some amount from him. It is the evidence of P.W.10 that after hearing the above, they came and sat in the Car. A.3 and A.9 came out of the house after half an hour and both of them left the place in the Ford Car belonging to P.W.10. P.W.10 and P.W.11 followed the said Car and in turn they also followed by another three persons viz., A.4, A.6 and A.11 in a separate car. While they were travelling, they were asked to come to a temple on NSC Bose Road and accordingly they went to the said temple and were waiting for A.3 and A.9. After some time A.3 along with some other persons including A.1, A.2 and A.12 came there. P.W.10 and P.W.11 had followed the said car and thereafter dropping A.12 at Chindadripet, they went to Woodlands drive-in-hotel. Thereafter, P.W.10 and P.W.11 went to their places.

(e). A.9 again contacted P.W.10 over phone on the next day, and requested him to get the key of the house belonging to one Chowdry of Mahalakshmi Nagar. Accordingly, P.W.10 and P.W.11 collected the said key from Chowdry and waited in the house for A.9 to come. At about 7.00 p.m, A.3, A.9, A.1 and A.5 came there. A.1 was introduced as V.I.P to P.W.10 and P.W.11 and A.9 informed that P.W.10 and P.W.11 shall provide food and other requirements to A.1. Accordingly P.W.11 had provided food to A.1 on 30.12.2001 and 31.12.2001. Thereafter, at the request of A.9, P.W.10 arranged Rs.1,10,000/- to A.3 as well as one Ambassador car and motor cycle to A.3. The said amount of Rs.1,10,000/- was arranged by P.W.10 by pledging his jewels. The said amount was given to A.2 at Hotel

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Excellency. Again A.3 requested P.W.10 to arrange a Maruthi Van, but he expressed his inability to provide Maruthi Van. Again on 30.12.2001, at about 9.00 a.m, A.1 phoned P.W.10 and asked to him to come to his house. P.W.10 and P.W.11 went to the house of Udayakumar and thereafter asked the key of Semiya manufacturing company. Thereafter, P.W.10 and A.5 went to the Semiya factory. When he was waiting in the Semiya factory, he was called by A.9 also talked to P.W.32, Krishnapandy, the owner of the Semiya factory. Thereafter P.W.10 went to A.9's house and saw A.1 and A.2. He also heard A.3 telling the other accused that M.K.Balan was abducted and the remaining thing only would be collected money from him.

(f). Even after the above, on the request of P.W.10 and P.W.11 had arranged rooms in Hotel Henkala, Tambaram for A.9. He heard A.3 asking A.9 as to where they have disposed the Maruthi Van and A.9 replied that the maruthi van was just in front of Vasantha Bhavan Hotel and it would be taken by P.W.3. P.W.10 again heard the driver of A.3 asking him for a chain to tie M.K.Balan. He also saw A.9 handed over Rs.100/- to the driver for purchasing a chain. He also saw A.3 informing P.W.10 to provide food for those who are staying in the Semiya factory. On 31.12.2001 at about 8.30 p.m., both P.W.10 and P.W.11 saw M.K.Balan tied in a chain, his eyes also tied and was sitting in the green colour steel cot which P.W.10 and P.W.11 had purchased. He also saw M.K.Balan wearing the T-shirt and dark pant and also the Reebok shows lying just some distance away from the cot. P.W.10 made arrangement to buy the audio cassettes and handed over to P.W.9, at his request and he also arranged the two-in-one tape recorder which was used for recording. Thereafter, P.W.10 heard A.3 saying A.9 that he wants one Ambassador car and A.9 replied that inspite of the best effort, he could not get an Ambassador car. Thereafter, he also heard that if no Ambassador car was available, he could get one Maruthi van and fix one Lummox Red light on it. As P.W.10 and P.W.11 had suspected something was going on, they again went to the Semiya factory at 8.45 p.m., and saw four persons bringing down the body of M.K.Balan and A.5 covered the body with a cloth brought by him. Both of them saw no movements over the body and they also saw the body was loaded in the van and taken out from the place.

(g). P.W.10 had infact paid the room charges to Henkela Hotel, Tambaram. He was also informed by one Sami, A.13 that M.K.Balan was murdered and his body was burned in Erukancheri cremation ground and therefore, he requested P.W.10 to perform pooja in the premises but P.W.10 did not do. He also saw all the fan, Bedpan, chair, cot etc., removed from the premises on 01.01.2002. On 03.01.2002, he made arrangements for taking a room for A.9 for A.1, A.2 and A.12 to stay.

(h). Thereafter he left for Bangalore and stayed there till he was informed by his wife on 18.03.2002 that A.5 was arrested by CBCID Police in connection with the murder of M.K.Balan and the police had enquired her. In spite of the above, he did not return to his house. He contacted his wife on 25th or 26th of April, 2002, and at the request of his wife, he came to CBCID Office on 01.05.2002 and narrated as to what had happened.

31. The evidence of P.W.11 also shows his participation in incidents at various stages along with P.W.10. In addition to the above, P.W.11 had

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also stated that he saw M.K.Balan was brought to Mudichur Semiya factory on 30.12.2001. He also saw four persons bringing the body of M.K.Balan from the upstairs and put the same into a van, M.O.6, and the van leaving from the said place. P.W.11 also stated even on 05.12.2001, he travelled with A.3 in his car along with A.1, A.2 and A.12 and stayed with A.1,A.2, A.5, and A.12 in A.9's house. The evidence of P.W.34, who is the owner of the Semiya factory shows that he knew A.9 from the year 1999 and A.9 told him that he will arrange for P.W.10 and P.W.11 to join as partners in his business. He had also spoken that P.W.10 and P.W.11 came to him to rent the premises to conduct a meeting for the company. He also met A.3 on A.9 in the factory premises during 10th December, 2001. He also met A.5 at 8.30 a.m., on 30.12.2001. He also made arrangements for the removal of the sofa set, cot, fan, Reebok Shows.

32. In so far as the evidence relating to obtaining death certificate in the name of one Rajamani chettiar, the evidence of P.W.32 is referable. P.W.32 is a Doctor in the Corporation of Chennai who issued the death certificate Ex.P.27 at the request of a known person certifying that one Rajamani Chettiar aged about 61 years died of heart attack. P.W.33, a lusker in the Corporation of Chennai and as a close associate of A.1 for a period of 15 years had deposed that he was contacted by A.13 and informed him that A.1 called him to his place, on his request, he went to A.1's house and A.1 informed him that a watchman of a company at Kollathur had died and therefore for transporting the body, he wanted Trauma care vehicle. However, P.W.33 informed him that it was not possible to get such a vehicle at that time. As requested by A.1 at about 5.30 a.m on 01.01.2002, P.W.33 and A.13 had gone to the Government Hospital in Perambur in search of a vehicle and they could not get such a vehicle, and therefore, he went to A.1's place on the next day and handed over him Rs.500/- towards his expenses and at request of A.1, he approached P.W.32 and obtained the death certificate Ex.P.27, as if one Rajamani Chettiar had died. P.W.36, the person in charge of the Crematorium had deposed that the body was allowed to be cremated only on the production of the said death certificate Ex.P.27. In so far as the recovery of M.O.13, the TATA Sumo vehicle from A.9, which is spoken to by P.W.15. P.W.15 has deposed that he know A.9 over a period of 30 years and on the request of A.9, he sold M.O.13, the auto. The vehicle used for the purpose of escorting the Ford Escort Car, M.O.6 on 30.12.2001 when M.K.Balan was taken to Semiya manufacturing factory for confinement. The above version is also corroborated by P.W.11. P.W.16 speaks of the recovery of Maruthi Van, M.O.12 through A.3, the vehicle used for the purpose of escorting Ford Escort Car, M.O.6 on 30.12.2001, when M.K.Balan was taken to Semiya manufacturing factory. P.W.18 speaks of recovery of M.O.7 Maruthi van, through A.9 which was used for the purpose of transporting the body of the deceased on 01.01.2002. P.W.24 speaks of recovery of M.O.8, the van through A.6. P.W.44 speaks as to the recovery of M.O.10 Motor cycle from A.15 and Reebok Shows, M.O.1. P.W.39 speaks of recovery of Ford Escort Car M.O.6 through A.4, the vehicle used for transporting the abducted M.K.Balan on 30.12.2001 to semiya manufacturing factory as corroborated by P.W.11. P.W.20, son of P.W.18 speaks as to the return of M.O.7 van by

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A.13. P.W.30 speaks of giving a van TSA 7484, M.O.9 to A.9 on 28.12.2001. P.W.26 speaks to the recovery of M.O.12 Maruthi Zen Car from A.3.

33. In so far as the implication of the accused, P.W.10 has implicated A.1 to A.11 and A.14. He also identified A.4, A.5, A.6, A.7, A.8, A.11 and A.15 on three occasions as spoken to by P.W.60, the Magistrate who conducted the identification parade. P.W.11 had also spoken to the accused A.4, A.5, A.6, A.7, A.8, A.10, A.11, A.14 and A.15 on three occasions when the identification parade was conducted by P.W.60, the Magistrate. P.W.12, the Vettian of Corporation Crematorium had also identified A.3, A.5, A.6, A.7, A.8, A.11 and A.13 on the first two occasions and thereafter A.3, A.5 and A.13 again on the third occasion. P.W.19 the incharge of the crematorium had idenfified A.3, A.6, A.7 on one occasion that A.13 on two occasions. P.W.35, the constable who saw the accused travelling in a Maruthi Van M.O.7 on the night of 01.01.2002 and identified A.6, A.7 and A.8 on all three occasions. P.W.21 another constable who was on the routine night beat along with P.W.35 had also identified A.6, A.7, A.8 on one occasion and A.6, A.7, A.8 and A.11 on two occasions. Though there are no contradictions much less vital contradictions in respect of identification of all the accused by the witnesses both in the identification parade as well as in Court in so far as A.10 is concerned, though he has been identified by P.W.10 in Court, he has not identified A.10 in the test identification parade. Similarly though P.W.11 had identified A.10 in the test identification parade, he could not identify him before the Court. In view of the above vital contradictions, we are of the considered view that it would be unsafe to convict the accused holding that he also involved in the occurrence.

34. As the prosecution case rests on circumstantial evidence, the court must be cautious while appreciating the evidence connecting the accused to the offence alleged to have been committed by them. It should see with utmost care as to whether the chain of circumstances is without any vital severance and there should not be any missing link. From the above discussion, we have no hesitation to hold that the prosecution has proved beyond any reasonable doubt, the circumstances in its entirety leading to the commission of murder of M.K.Balan by the accused/appellants right from the abduction on the morning of 30.12.2001, he was taken to semiya manufacturing factory, kept in confinement for a day thereafter he was murdered, and the body was transported from the said factory in a Maruthi Van to Perambur Crematorium and was burned to ashes.

35. Mr.B.Sriramulu, learned Senior counsel would submit that the abnormal conduct of P.W.10 and P.W.11 after the alleged occurrence makes their evidence untrustworthy and undependable and it is highly unsafe to base the conviction on such evidence. In support of the the said submission, he would rely upon the judgment of this Court reported in 2007 (2) MLJ (Crl.) 401 (Arjunan vs. Auto Arjunan and others v. state, represented by the Inspector of Police, Rural Police Station, Tiruppur). That was a case of two eye-witnesses P.W.6 and P.W.7 to the crime of double murder. In spite of the fact that they were closely related to the

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deceased, they did not disclose the occurrence to anybody eventhough they witnessed the occurrence within 20 feet distance. Noting that there were some contradictions in their evidence as well, the court found that it is unsafe to rely their evidence as it is untrustworthy and undependable. In our opinion, the said case is not applicable to the facts of the present case. P.W.10 and P.W.11 are accomplices and they were present at all stages along with the accused and aided them in very many ways, we have analysed their evidence with great care and caution. It is true that both of them had not informed the occurrence to anybody and were not to be seen for more than a period of months. For their conduct they have given acceptable explanation. Both the witnesses have spoken that as they came to know that A.3 and A.9 had indulged in an act of serious offence, they were threatened by the accused that if they reveal what had happened, they and their family members would be in danger. Afraiding such danger, they had hided themselves and therefore, they had not disclosed the occurrence to any person. The explanation in our considered view is reasonable and acceptable and in all probabilities, the witnesses had not disclosed to anyone, only fearing not only to their lives but also to their family members, eventhough there were wide publicity to the abduction of M.K.Balan both in Media and Press. Hence, the judgment relied on by the learned Senior Counsel is not of any assistance to the appellants/accused. The conduct of those witnesses is properly explained and we have no reason to reject such an explanation.

36. Much was argued as to the delay in conducting the test identification parade. In this context, the following judgments are relied upon:

(a) AIR 1972 SC 283 (Hasib v. The State of Bihar)

(b) 1999 SCC (Crl) 1452 (Rajesh Govind Jagesha v. State of Maharashtra.

(c.) AIR 1970 SC 1321 (Budhsen and another v. State of Uttar Pradesh)

(d) 1999 SCC (crl) 328 (Vijayan v. State of Kerala)

(e) 1982 SCC (crl) 356 (Munzoor v. State of Uttar Pradesh).

It is true that the Apex Court in all the above cases has considered and found that the test identification parade should be conducted as early as possible.

37. The purpose of conducting test identification parade is to test the statement of the witness made in the court which constitutes substantive evidence, if being the safe rule that the sole testimony of the witness in court as to the identity of the accused requires corroboration in the form of earlier test identification parade.

38. However in Rajesh Govind Jagesha's case, the Honourable Supreme Court had accepted the principle that prosecution can explain the failure to conduct identification parade within a reasonable time. In fact in Manzoor's case supra, the Apex Court had only observed that the test identification parade should be conducted at the earliest opportunity. It is not a General Rule that the test identification parade should be conducted immediately after the arrest by accused. In the event, the

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prosecution is able to satisfy to the court as to the delay in conduct of identification parade, the evidence relating to the identification parade not be discarded in toto. In order to consider the submission as to the delay in conduct of identification parade, it must be kept in mind that the entire prosecution case rests on circumstantial evidence. The occurrence had taken place at about 5.30a.m on 30.12.2001. A.5 was arrested at about 5.30 a.m., on 18.03.2002 and that too only through an information from an informant. On receipt of his confession statement, Ex.P.43, the Investigating officer in the course of further investigation, had prepared the observation mahazar Ex.P.44, P.46 and rough sketch Ex.P.45 of the place of occurrence, examined P.Ws.31, 34 and some recoveries were also made. Thereafter recorded the statement of P.Ws.30,34 and P.W.12 and P.W.19 and further recorded the statement of P.W.36 on the same day and thereafter on the next day i.e., on 19.03.2002 he arrested A.6 at 11.30p.m.,. Thereafter he arrested A.7 on 23.02.2002 at 2.30p.m. Thereafter, he arrested A.1 and A.2 on 23.03.2002 at 5.30a.m., and he arrested A.3 on 25.03.2002 at about 8.15 a.m., and he arrested A.9 on 30.03.2002 at about 7.45 a.m., and in the mean time he had seized the vehicle used for the crime and recorded the statement of various witnesses and thereafter he arrested A.4 on 09.04.2002 at 6.00a.m and A.12 on 10.04.2002, A.13 on 15.04.2002, A.14 on 09.04.2002, A.15 arrested on 24.05.2002 and A.16 arrested on 30.05.2002. After effecting the above arrest and examining the witnesses, on 22.05.2002 he recorded the confession of A.16, Ex.P.56 and recovered M.Os.34 to 39 and on 25.05.2002 he recorded the statement of P.Ws.20, 48, 51,52 and 56 and thereafter he recorded the statement of P.Ws.49,50, 57 till 30.07.2002 and in the mean time, he had made arrangements for test identification parade through P.W.16 on 24.05.2002. He made a inquest which was received by P.W.60 on 09.05.2002 and the test identification parade was conducted by the Magistrate, P.W.60 on 24.05.2004. The Investigation involves the examination of number of witnesses out of whom the prosecution had infact examined 67 witnesses before the Court. The investigation also involves the recovery of M.Os.1 to 39 and production of Exs.P.1 to P.87.

39. In a complicated investigation like this, where there was no clue for the involvement of any of the accused till A.5 was arrested on 18.03.2002, the delay in holding the test identification parade, if at all from the last arrest of A.16, i.e., on 22.05.2002 would not in our view render the same inconsequence and consequently it would affect the test on the ground of delay.

40. In this context, it is useful to refer the judgment of the Apex Court reported in (2001) 3 SCC 468 (Daya Singh v. State of Haryana), wherein it has been held thus:

> "theoretically in some cases the emotional balance of the victim or eyewitness may be so disturbed by his extraordinary experience that his powers of perception may become distorted and his identification may become untrustworthy and for that purpose the evidence of the witness is required to be appreciated with extra care and caution, but where reasons for

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gaining an enduring impress of the identity on the mind and memory of the witnesses are brought on record, it is no use to magnify the theoretical possibilities and arrive at a conclusion - which in the present-day social environment infested by terrorism is really unimportant. In such cases, not holding identification parade is not fatal to the prosecution. Where evidence is cogent, consistent and without any motive, it is no use to imagine and magnify theoretical possibilities with regard to the state of mind of the witnesses and with regard to their power of memorising the identity of the assailants. Power of perception and memorising differs from man to man and also depends upon situation. It also depends upon the capacity to recapitulate what has been seen earlier. But that would depend upon the strength or trustworthiness of the witness who have identified the accused in the court earlier."

Recently the Honourable Supreme Court in the Judgment reported in AIR 2007 SC -1729 (Ravi @ Ravichandran v. State represented by the Inspector of Police) has held that "It is no doubt true that the substantive evidence of identification of an accused is the one made in the Court. A Judgment of conviction can be arrived at even if no test identification parade has been held. Only when First Information Report is lodged against an unknown person, the test identification parade is held for the purpose of testing the veracity of the witness in regard to his capability of identifying persons who were unknown to him and such test identification parade is required to be held as early as possible as to exclude the possibility of the accused being identified either."

Hence the contention that the delay in conducting the test identification parade would throw serious doubt about the prosecution case cannot be accepted.

41. In view of our above discussion, we have no hesitation to hold that the prosecution has proved the case beyond reasonable doubt by let in evidence right from the date when M.K.Balan was kidnapped, i.e., on 30.12.2001 at 5.30a.m., till he was cremated on 01.01.2002, without any missing link. Though P.W.10 and P.W.11 are accomplices, their evidence are trustworthy and are reliable. There are enough materials to corroborate their evidence, and therefore, we have no reason to reject their evidence let in on behalf of the prosecution, more particularly the evidence of P.W.10 and P.W.11. Hence, we are of the considered view that there is absolutely no infirmity or illegality in the Judgement of the trial Court in convicting and sentencing the accused for the offences as mentioned in the earlier portion of the order.

42. As far as the submission as to the absence of motive, from the evidence of P.W.10 and P.W.11, it is clear that the common object for the offence is to collect some money from M.K.Balan, their evidence show that in the event, the demand for payment of money is not acceded by M.K.Balan, he should be done away with. To achieve the common object, they had conspired together. The individual participation of each of the accused

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by itself show their common object and having abetted for commission of the offence. Hence, the said contention also has no merit.

43. Mr.A.Padmanabhan, learned counsel appearing for A.3, A.5 to A.9 submitted that M.O.28, the cassettes and M.O.31, bid paper alleged to have been recovered from A.3 were not sealed and failure on the part of the investigating officer to seal those M.Os would render the recovery only to be disbelieved. It is true that as could be seen from evidence, those M.Os were not sealed. Nevertheless in our considered view, even if those M.Os are kept aside for consideration, we are convinced with other materials to bring home the prosecution case without any severance in the chain of circumstances. It is also argued that the body was not identified by anybody and therefore, when the death which is not proved, the prosecution case must necessarily fail. On our careful and collective reading of the evidence in entirety, it is seen that the man who was abducted on the morning of 30.12.2001, was kept in custody by the accused in the premises belonging to P.W.34 and the said man was murdered in the premises and his body was removed to be cremated in Perambur Crematorium. The said man is none other than M.K.Balan and the circumstances speak in proof of the same. Hence, the said contention is also liable to be rejected.

44. Aggrieved by the acquittal of A.12 and A.18, the State has also preferred C.A.No.685 of 2005. The contention of the learned Additional Public Prosecutor is that the reasons given by the learned trial Judge to acquit A.12 is totally unsustainable. He would submit that inasmuch as she has given confession statement Ex.P.65, under Section 164 Cr.P.C, as to her involvement, the learned Judge ought to have convicted the accused. The learned Judge disbelieving the confessional statement on the ground that in most of the places, A.12 has used only English language, as she is an Anglo-Indian, she could not have spoken the voice of Sasikala. Even in respect of her voice, the Investigating Officer has failed to record the voice of A.12 and then record the voice of Sasikala for the purpose of comparison. In fact Sasikala was examined during the course of investigation and her statement under Section 164 Cr.P.C was also recorded.

45. As far as the fact as to whether A.12 could have spoken in the voice of Sasikala, there are two views possible and when the trial Court had taken one view and consequently acquitted A.12, it is not for this Court to take a different view in appeal for the purpose of conviction. Hence, we do not find any infirmity in the Judgement of the trial Court in acquitting A.12.

46. In so far as the appeal by the State, acquittal of A.18 is concerned, our attention was drawn that none of the witnesses have identified A.18 and implicated him for the offence. In the absence of any identification and in the absence of any material connecting A.18 to the involvement of the crime, the judgment of the trial Court in acquitting A.18 cannot be interfered. Accordingly, the appeal preferred by the State

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has to be dismissed.

47. Crl.M.P.No.493 of 2007 has been filed by P.W.1 for assisting the prosecution. Mr.Veerakathiravan, learned counsel appearing for the petitioner submitted that investigation has not been properly conducted and the real assailants were not brought under the folds of law. As we have accepted the evidence let in on behalf of the prosecution, we are not inclined to accept the contention made by the petitioner in this bahalf.

48. For all the above reasons, C.A.Nos.698 of 2004 in respect of all the accused except A.10 is dismissed and the conviction and sentence imposed by the trial Court is confirmed and in respect of A.10, C.A.No.698 of 2004 is allowed and the conviction and sentence imposed on A.10 is hereby set aside. Fine amount, if any, paid by A.10 is ordered to be refunded to him.

C.A.Nos.716, 781 of 2004 filed by the accused and C.A.No.685 of 2005 filed by the State are dismissed. The conviction and sentence imposed by the trial Court is confirmed.

Consequently, Crl.M.P.No.493 of 2007 is also dismissed.

ksr

sd/-
Asst.Registrar

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Sub Asst.Registrar

To

1. The Additional District and Sessions Judge
(Fast Track Court No.I.)
Chennai

2.-do- through the Principal Sessions Judge
Chennai

3.The Deputy Superintendent of Police,
CBCID, Metrowing,
Chennai

4.The Public Prosecutor
High Court, Madras.

5.The District Collector
Chennai.

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6.The Director General of Police
Chennai.

7.The Superintendent of Central Prison
Vellore.

8.The Superintendent of Central Prison
Tiruchirappalli.

9. The Chief Metropolicatan Magistrate,
Egmore, Chennai. (for information)

10. The Principle Sessions Judge,
Chennai.

11. The Superintendent,
Central Prison, Puzhal, Chennai.

+ 1 cc to Mr.N.Manokaran Advocate SR.NO.62101
+ 1 cc to Mr.R.Johnsathyan Advocate SR.NO.61966
+ 2 cc to Mr.G.Ravikumar Advocate SR.NO.61971
+ 1 cc to Mr.AN.Thambidurai Advocate SR.NO.61958
+ 1 cc to Mr.Veerakathiravar Advocate SR.NO.62212
+ 1 cc to Mr.M.V.Muralidaran Advocate SR.NO.62041

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